



Lyma Nguyen

FIGHTING JUSTICE in Cambodia

When Lyma Nguyen started a fight for justice in Cambodia in 2008, it was on her own time and money. Then she was working out of a hotel filing submissions to court from genocide victims of the Khmer Rouge regime. She has since gained the support of Australian Volunteers International and Lawyers Beyond Borders. Now representing 130 clients who express their suffering to a dismissive tribunal, Nguyen talks to *Brisbane Legal*.



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MATTHEW OGG

POL Pot is a name synonymous with tyranny, but one man cannot murder 2.5 million people alone.

Last year the Hague-backed Extraordinary Chambers in the Courts of Cambodia convicted Kang Kek Lew, otherwise known as 'Duch', for crimes against humanity, torture and murder in a school that was turned into a prison camp from 1975 to 1979.

The Duch case is known as 'case one', but 'case two' is a different can of worms, according to Nguyen, with 350,000 documents and four defendants contesting a variety of genocide and other mass crimes charges that span the entire country.

The case against Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith will likely start proceedings in March. In the meantime Nguyen is working for her clients to be admitted by the court as civil parties so their statements are not just used as evidence, but entitle them to reparations as well.

She represents mostly ethnic Vietnamese, as well as foreign nationals from Australia, New Zealand and the US.

"I started work in 2008 and was doing it all pro bono, in my own time, with my own funds and I came here on 'rec' leave while working full-time in Australia, working with NGOs to outreach to people to inform them of their rights to participate as civil parties, complainants or witnesses to the tribunal," she says.

"We started doing interviews with ethnic Vietnamese victims about what happened, which

was interesting because the statistics show that the elimination rate of Vietnamese was 100 per cent, but those who survived went to Vietnam and came back.

"I can speak Vietnamese directly with them, which allowed for trust to be established with the victim group, who generally have fears of authority because so many regimes – Sihanouk, the Khmer Republic and the Khmer Rouge – had tried to wipe them out."

Despite her detailed submissions to the tribunal, clients' claims were rejected in January and are now under appeal. Nguyen's frustration is palpable.

"We submitted a request for further investigation into our clients, but the court rejected the request into genocide against our clients – the court decided to deem the civil party applicants as inadmissible because the direct and personal harm they suffered could not be linked to the limited geographical scope they were investigating," says Nguyen.

"With these types of cases you have to prove specifically an intention to destroy a group as a whole or in part, and what I've presented is a very clear genocide case.

"People were forcibly relocated from various areas in Kampong Chhnang to one area in the region, they were forced to work for four months and then they were forced to leave. For those who remained, the Khmer Rouge had a policy about mixed marriage where they expected the Cambodian person to kill their spouse and the children as well."

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Nguyen's description of the coordination between local and international authorities in the tribunal is not flattering. It misses key elements of international law as far as she's concerned.

"The court has indicted four people in court on persecution of ethnic Vietnamese, but they have deemed the submissions of ethnic Vietnamese inadmissible," she says.

"It's a very narrow approach that the harm they suffered has to be directly linked to the facts under investigation. It's really significant for the moral stance of the ethnic Vietnamese to be admitted on the basis of persecution of ethnic Vietnamese.

"It's not good enough for me that the court system is investigating in other areas where there are no Vietnamese applicants, but they are dismissing the facts that have been presented to them from ethnic Vietnamese in Kampong Chhnang.

"It's been a large learning experience for everybody and the experience is the same with the UN or the other side of the court that everything is done on the go. It's an intense time."

Growing up in Brisbane as the daughter of Vietnamese refugees, Nguyen says she has wanted to work in human rights law since her involvement with Amnesty International during high school.

After graduating from the University of Queensland (UQ) in 2006 she worked with the Queensland Director of Public Prosecutions and the Department of Immigration, before moving

to Canberra in 2007 to work with the Attorney General's Department and the Commonwealth Director of Public Prosecutions.

"When the opportunity came to be involved to represent victims of the Khmer Rouge I took that opportunity. What I've found working in this jurisdiction is that you really do have a lot of autonomy, a lot of room to direct where the work is going to go and you generate your own work," she says.

"This jurisdiction comes with a lot of frustration, but having the support of Lawyers Beyond Borders and Australian Volunteers International helps. I'm so grateful for the support because everything adds up when you're doing it all on your own, with the flights, the visas.

"I did my tax return and it came up to around \$15,000 in the first year. There are all types of costs like registration fees for this jurisdiction to be admitted to the bar, all the peripheral costs like printing, travel insurance, in-country travel. I was working from the hotel so I didn't have an office, so it's been positive to have a stable support network."

With her placement set to finish in December and a lot more work to do, Nguyen hasn't had much time to miss home or take her mind off the case and will continue filing submissions when she gets back to full-time work in Canberra in next year.

She expects the case to go for two years.

"The four defendants in 'case two' are contesting everything and the scope of the case is much more far-reaching, it spans the entire



country, and there's a real tension in this court about the length of the trial and whether it's feasible," she says.

"From the victims' perspective a lot of them are in the position of, 'it's taking too long, everybody knows what they've done, and I want reparations for the death of my family - why do they need to be tried at all?'"

Push for medical compo changes

SLATER and Gordon's medical team are pushing Queensland Attorney-General Cameron Dick to adopt interim payments for compensation plaintiffs similar to that used in New South Wales.

The firm's medical law team leader Margaret Brain, has been in discussions with the AG regarding financial assistance for people awaiting the outcomes of medical negligence claims.

Using the example of client Teisha Mason, who has been waiting four years for an outcome on her compensation claim against Caboolture Hospital, Brain says families in particular suffer unfairly.

At 11-weeks-old, Mason's son Ryan allegedly suffered severe brain damage and quadriplegia during treatment and the family has been forced to pay for all costs associated with his rehabilitation and specialist care while they await the outcome of their civil lawsuit.

In NSW, the Civil Procedure Act 2005 sets out a process to apply for an interim payment order. It provides for a fairly straightforward process, provided that the case is clear cut and there is no real doubt about a breach of duty, causation or damage.

"If the family was able to access an interim payment - as people in New South Wales are able to apply for - then there could be some initial financial support to assist the Mason family during this time," says Brain.

"Access to interim payments would go a long way to assisting families who already have to cope with the radical and traumatic adjustment in their lives after someone has suffered an injury following a medical procedure.

"It means help earlier to those struggling and in dire circumstances as they await the finalisation of their claim."

Brain says the complexity of medical negligence cases mean 'it can take years before compensation claims are resolved', but the slow processes are exacerbated when children are involved.

"There is a lot of evidence and expert advice that has to be gathered and considered. This is particularly the case for medical negligence claims involving small children," she says.

"In those cases you usually must wait to see what the long-term and permanent injuries will be and some of this can only be assessed as the child develops.

"But what this means is that it can be years before a claim can be finalised and that person or child and their family, must wait before they can see any financial compensation.

"In the meantime, these families are left to cover any bills that must be paid in relation to the injury."

She says access to an interim payment would cover medical bills, rehabilitation expenses and



Margaret Brain

any costs associated with home modifications or medical aids such as wheelchairs.

In a short written response to *Brisbane Legal*, Dick confirmed that he had received the letter from Slater and Gordon and 'will give consideration to the contents'.

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